DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

Consumer HealthCare Products Association
Attn: R. William Soller, Ph.D.
Senior Vice President and
Director of Science & Technology
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

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AUG 9 1999

Dear Dr. Soller:

On June 29, 1999, representatives from the Division of Over-the-Counter Drug Products (DOTCDP) and the Office of Drug Evaluation V met with industry representatives to discuss the new labeling format (21 CFR 201.66). Formal presentations were made by the Consumer Healthcare Products Association (CHPA), the Cosmetic, Toiletry and Fragrance Association (CTFA) and the Uniform Code Council (UCC). This feedback letter addresses the following issues that were discussed at the meeting:

- Procedures for submitting exemptions and deferrals
- Submission of labeling changes for NDA and ANDA products
- Reporting requirements for drug products marketed under an NDA or ANDA
- Across the board small package exemptions
- UPC exemption from calculation of total surface area available to bear labeling
- Across the board trade dress exemptions
- Across the board special package exemptions
- Column formatting

Procedures for Submitting Exemptions and Deferrals *21 CFR 201.66(e)*

The Final rule for Over-The-Counter Human Drugs Labeling Requirements published in the Federal Register on March 17, 1999 (64 FR 13254) provided for any manufacturer, packer, or distributor to submit a written request for exemption or deferral (21 CFR 201.66(e)) of one or more requirements of 21 CFR 201.66. 21 CFR 201.66(e) allows for the following:

- Requests for exemptions shall be submitted in three copies in the form of an "Application for Exemption" to the Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD *20852*.
- The request shall be clearly identified on the envelope as a "Request for Exemption from 21 CFR 201.66 (OTC Labeling Format)" and shall be directed to Docket No. 98N-0337.
- A separate request shall be submitted for each OTC drug product.
- Sponsors of products marketed under an approved drug application shall also submit a single copy of the exemption request to their application.[1]
- Exemption and deferral requests shall:
  1. Document why a particular requirement is inapplicable, impracticable, or is contrary to public health or safety; and
  2. Include a representation of the proposed labeling, including any outserts, panel extensions, or, other graphical or package techniques intended to be used with the product.
- Decisions on exemptions and deferrals will be maintained in a permanent file in Docket No. 98N-*0337*.

[1] Sponsors of products marketed **under an approved drug application should submit this copy of the exemption request to their application in accordance with** 21 CFR 314.70(b).

98N-0337

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Submission of Request to DOTCDP

Section 20 1.66(e) outlines the process for submission of exemption and deferral requests for drug products marketed under a monograph or an approved application. For drug products that are not the subject of an approved application, it is also suggested that the sponsor submit one copy to the Director, DOTCDP. This will permit DOTCDP to process the request and initiate a review as time and resources permit prior to receiving the delayed request from the Dockets Managements Branch (DMB).[2] A submission to DOTCDP does not preclude the sponsor from submitting the request to the DMB. The request within DOTCDP will be tracked by the docket comment number assigned by the DMB, It is not the responsibility of the DOTCDP to send the request to the DMB.

The DOTCDP will not respond to an exemption request that has not been received by the DMB and assigned a docket comment number.

Confidentiality

Section 20.6 l(d)' states that a person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under exemption 4 of the Freedom of Information Act. The designation must be in writing and may be made either at the time the records are submitted to the Government or within a reasonable time thereafter.

Requests for exemption from the OTC labeling format (2 1 CFR 201.66) are processed through a public docket. Therefore, manufacturers will have to make the confidentiality designation in writing at the time the exemption request is initially made. In the request for confidentiality, the manufacturer must provide reasons why any information should be treated as confidential and how it meets the definition in 2 1 CFR 20.6 1(b). The cover letter for the exemption request will be included in the public docket even if confidentiality is granted. For ease of processing, the request for confidentiality should be provided on a separate page. The cover letter, however, should clearly and prominently state that a request for confidentiality is included with the information. The agency will make a decision regarding confidentiality shortly after receiving that request.

Manufacturers should be aware that the agency intends to make its decisions on any exemption or deferral requests public in the docket in the Dockets Management Branch. While certain information may be treated as confidential upon receipt and possibly after a decision is made, some aspects of the information may become public when the agency's letter is sent to the manufacturer and a copy of that letter is placed in the docket.

This issue is complex and requires additional discussion between the industry and the agency.

Format and Content of Submissions

An exemption and/or deferral request should include:

- A cover letter that includes: the statement "application for exemption", the NDA or ANDA number for approved drug products and a description of the drug product and shelf keeping unit(s) covered by the exemption request;
- A table of contents or index;
- A copy of the most recent marketed product label for products marketed under a monograph and the most recent approved labeling for drugs marketed under an NDA or ANDA[4];
- A complete listing of all the requested exemptions from 2 1 CFR 20 1.66(c) and (d);

[2] There may be a some delay between the time the Dockets branch receives the submission and the time the request is forwarded to the DOTCDP.

'21 CFR20.61

[4] Additional labeling submitted under 21 CFR 3 14.70(c) or (d) since the last approved labeling should be included in the submission with the date of submission referenced and how they were submitted (e.g. annual report, pending supplement). For drugs marketed under an ANDA, the labeling of the reference listed drug product in Drug Facts format should be included.

- There should be documentation illustrating why a particular requirement is inapplicable, impracticable, or is contrary to public health or safety'. The sponsor should provide labeling in the Drug Facts format following 2 1 CFR 201.66 with annotation of the parts of the label where exemptions are requested,
- A representation of the proposed labeling, including any outserts, panel extensions, or other graphical or package techniques intended to be used with the product;
- The proposed labeling should include information on formatting, text style and text size as illustrated *in 64* FR 13254 at 13293.

Failure to provide this information may result in denial of the request or a request for more information to the sponsor.

Review of Exemption Requests

The DOTCDP will only respond to the specific exemptions requested. The sponsor of the request is responsible for assuring that the remainder of the labeling is in compliance with Section 20 1.66 and other regulations pertinent to the drug product.

For products of approved applications, the DOTCDP prefers that exemption requests not be bundled with other labeling changes. If other labeling changes are included with the exemption request, the request will be handled as a routine labeling supplement.

Reporting Requirements of Drug Products Marketed Under an NDA or ANDA and Not Requesting an Exemption' (21 *CFR 314.70)*

The preamble to the final rule clarifies the procedure for submission of labeling changes to an OTC drug product marketed under an NDA or ANDA. Labeling changes to an OTC drug product marketed under an NDA or ANDA must be made in accordance with 2 1 CFR 3 14.70. As noted previously, any requests for exemption should be submitted under 21 CFR 3 14.70(b). Labeling changes that precisely follow 2 1 CFR 20 1.66(c) and (d) with or without editorial changes specified in 2 1 CFR 330. I(i) or (j) should be submitted under 21 CFR 3 14.70(c) or (d). For those drug products that are the reference listed drug in the Orange Book and do not request an exemption or deferral, the DOTCDP requests that the sponsor submit labeling changes under 21 CFR 3 14.70(c).

Submission of Labeling Changes for Products Approved Under an ANDA

The sponsors of ANDA products should submit labeling in the Drug Facts format to the Office of Generic Drugs that complies with the labeling of the reference listed drug product. In instances where the sponsor of the reference listed drug product has not provided labeling in the Drug Facts format before the regulatory due date or provided sufficient time for the ANDA holder to comply by the due date, the ANDA holder should request a deferral. The deferral should clearly explain the need for the deferral and specify the duration of deferral requested[7]. The deferral request should be submitted as previously described in this letter.

Format and Content of Submissions

For labeling changes submitted under 2 1 CFR 3 14.70(c) or (d)[8], the sponsor should provide the following:

- A cover letter stating that the submission includes new labeling in the Drug Facts format for the drug product and shelf keeping unit(s);
- A table of contents or index;

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[5] This may require the sponsor to submit the label for a drug product in the Drug Facts format following 21 CFR 201.66 to better illustrate the problems.

[6] It should be noted that those products marketed under an OTC monograph are not required to submit labeling unless exemptions and/or deferrals to the final rule are requested.

[7] This request should be supported by information on drug product supplies that use the old label format.

[8] For drug products approved under an ANDA, the sponsors should follow the procedures they normally follow for labeling changes

- The most recent approved labeling[9];
- A representation of the proposed labeling, including any outserts, pane! extensions, or other graphical or package techniques intended to be used with the product;
- The proposed labeling should include information on formatting, text style and text size as illustrated in 64 FR 13254 at 13293.

Each drug product may have several stock keeping units. The labeling for each stock keeping unit should be included in the submission.

Small Package Exemption

CTFA proposed an across the board exemption be granted for:

- packages with less than 12 square inches of labeling surface area, or
- trial size package, packette or single use unit, or
- if more than 60% of its total surface area available for labeling on the back and-side panels, if any, (excluding the principal display panel) must be used to satisfy the content requirements.

These proposals are no different than the comments discussed in the preamble of the final rule (64 FR 13254 at 13267). The position of the agency is clearly stated in the preamble and has not changed.

The purpose of this final rule is to establish a standardized format for the labeling of all OTC drug products so that the labeling will be easier to read and understand, and will provide consistent information in like situations (64 FR 13254 at 13275). By granting a genera! exemption for small packages, the problems associated with the readability of current small OTC packages will persist. Section 201.66(d)(10) already provides for some changes in the format and content for small packages that fulfill certain requirements.

UPC

The UCC presented information on the standards for the uniform product code (UPC). The UCC recommends the UPC be at least .8 times the 100% standard size of 1 inch (height) by 1.5 inches (width)." They noted that the rejection rate when scanning the package increases when the size of the UPC is below .8 times the standard size." Numerous small packages were shown at the meeting and most did not adhere to this standard. In many cases, the manufacturer sacrificed height over width.

From the numerous examples available at the meeting, the size of the UPC code on small packages varied as a function of the size and shape of the package. This suggests that manufacturers are already altering the size of the UPC prior to implementation of the labeling fmal rule. Consequently, it is difficult to argue that the fma! rule will have a great impact on the size of the UPC because manufacturers already adjust the size based on the shape and size of the package. Therefore, the agency finds no basis to give a genera! exemption to exclude the UPC area from the calculation of the total surface area available to bear labeling.

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[9] Additional labeling submitted under 21 CFR 3 14.70(c) or (d) since the last approved labeling should be included in the submission with the date of submission referenced and how they were submitted (e.g. annual report, pending supplement).

[10] Maintaining the height is more important than maintaining the width.

[11] Based on data from a study performed in 1992.

Closing Remarks

Trade dress exemptions, special package exemptions, and column formatting were also discussed at the June 29, 1999 feedback meeting. Trade dress and special package exemptions will require further detailed discussions with industry. Working group meetings to discuss these two issues are tentatively scheduled for August 24, 1999 and September 17, 1999. The columns format issue is currently under discussion within the agency and will be discussed in a separate communication.

Sincerely yours,

Charles J. Ganley, M.D.
Director
Division of Over-the-Counter Drug Products
Office of Drug Evaluation V
Center for Drug Evaluation and Research